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No. 93-1440

In The

Supreme Court of the United States

October Term, 1993

GROUP PROGRAMS, INC.; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.; THIRD NATIONAL BANK; LIBERTY MUTUAL INSURANCE COMPANY; PATRICK HUVAL; DIANNE B. FLORES; THOMAS K. HUVAL; DALE F. HUVAL and KATHRYN H. PONTIFF,

Petitioners,

vs.

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA,

Respondent.

On Petition for Writ of Certiorari to the Louisiana Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a nonresident trustee is subject to personal jurisdiction in Louisiana under circumstances where the trust was created to issue insurance coverage in Louisiana; was regulated by the Louisiana Commissioner of Insurance; maintained its assets in Louisiana; issued coverage to Louisiana citizens and Louisiana employers; and was administered in Louisiana by a Louisiana corporation acting by authority of the nonresident trustee.

2. Whether a nonresident trustee is subject to personal jurisdiction in Louisiana where the trustee entered into contractual arrangements authorizing a Louisiana insurance trust to issue insurance coverage to thousands of Louisiana residents without authority from the Louisiana Department of Insurance and where the trustee directly undertook (and then breached) contractual obligations in favor of the Louisiana beneficiaries and participants in the trust.

3. Whether the Commissioner of Insurance established a *prima facie* case for Louisiana's *in personam* jurisdiction over Third National Bank.

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STATEMENT OF THE CASE

In 1985, Third National Bank voluntarily entered into an agreement that created the Summit Insurance Plan Trust. The Summit Insurance Plan Trust was established as a multiple employer trust to provide coverage to Louisiana citizens and was subject to regulation by the Louisiana Commissioner of Insurance. Under the terms of the trust agreement, Third National Bank was designated as Summit's trustee and Group Programs, Inc., as its grantor and administrator. The Summit Insurance Plan Trust operated exclusively in Louisiana from March 1985 until June 1988, and predominantly in Louisiana thereafter.[1] In 1989 alone, twenty million dollars ($20,000,000) worth of premiums were collected and processed in Louisiana.[2] The trust was administered in Louisiana and the accounting services for the trust were performed in Louisiana.[3] Third National Bank served as the sole trustee of the Summit Insurance Plan trust from the time it was created on March 8, 1985, until 1990 when it was placed in rehabilitation by the State of Louisiana.[4] From 1985 through 1990, Third National Bank issued invoices to Louisiana, and received payment from Louisiana banks for its annual fee for acting as trustee of the Summit Insurance Plan Trust.[5]

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1. *See* Exhibit 1, p. 100, the October 25, 1990, deposition of Patrick Huval (Exhibit Envelope 2).

2. *See* Exhibit 15 (Exhibit Envelope 2).

3. *See* Exhibit 21, paragraph 8; Exhibit 3; Exhibit 1, pp. 31, 57, 61, 65, 66, 86; Exhibit 11, pp. 59, 60 (Exhibit Envelope 2).

4. *See* Exhibit 8, deposition of Robert Mayer and Exhibit L-3 attached to Exhibit 1, the October 25, 1990, deposition of Patrick Huval (Exhibit Envelope 2).

5. Third National Bank invoiced Group Programs $500 annually for (Cont'd)

Under the trust agreement, Third National Bank, as trustee, had three (3) basic duties: (a) to obtain, through Group Programs, group insurance providing full life, health, accident and disability insurance coverage for the beneficiaries of the trust; (b) to hold and maintain the policy or policies in force; and, (c) to terminate the trust immediately in the event that any group master insurance policy or policies terminated, lapsed, or expired without being renewed unless the coverage was replaced immediately without any gaps in coverage. Any replacement policies were to be approved by Third National Bank in writing in advance.[6]

In March of 1985, pursuant to the terms of the trust agreement, Third National Bank, acting through Group Programs, applied to Durham Life Insurance Company of Raleigh, North Carolina for a policy providing coverage for Louisiana employers and participants in the Summit Insurance Plan Trust. The policy issued, and Durham Life and Group Programs executed a Master Administrative Agreement (the "1985 Master Administrative Agreement") whereby Group Programs agreed to administer Summit's health claims on Durham's behalf.[7] Group Programs' responsibility to Durham under the 1985 Master Administrative Agreement was to administer the Durham insurance policy issued

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acting as Trustee of the Summit Insurance Plan Trust, and Third National Bank annually received payment of the fee from Group Programs, Inc. *See* Exhibit 8, deposition of Robert Mayer, pp. 31-37 and Exhibit TNB #5 attached to the Mayer deposition. Exhibit 16, deposition of Patrick Huval, pp. 31-37. Exhibit 18 is a copy of Check No. 2765 in the amount of $500 payable to Third National Bank, issued out of Group Programs' offices in Louisiana, and drawn on a Louisiana bank. *See* Exhibit 17 (Exhibit Envelope 2).

6. *See* Appendix B (6a), Insurance Trust Agreement (Exhibit 2, Exhibit Envelope 2).

7. *See* Exhibit 3 (Exhibit Envelope 2).

to Summit in accordance with guidelines set by Durham. Durham paid Group Programs an administrative fee for these services.

From March 1985 through June, 1988, the Summit Insurance Plan Trust was fully insured by Durham Life Insurance Company. In the spring of 1988, Durham Life Insurance Company terminated the policy which it had provided to the Summit Insurance Plan Trust. At that point, Third National Bank, as trustee of the Summit Insurance Plan Trust, was under a duty to terminate the trust pursuant to the terms of the Insurance Trust Agreement. In contemplation of the loss of the Durham insurance coverage, rather than terminate the trust, Third National Bank and Group Programs executed a *new* Master Administrative Agreement to be effective June 1, 1988, the effective date of Durham's cancellation (the "1988 Master Administrative Agreement").[8] Under the 1988 Master Administrative Agreement, Group Programs administered the Summit Insurance Plan Trust *under direct authority from Third National Bank.* The 1988 Master Administrative Agreement, executed solely between Group Programs and Third National Bank, authorized the Summit Insurance Plan Trust to continue operating in Louisiana after June 1, 1988, even though Durham had terminated the only group policy which provided coverage for the trust. At this point, the Summit Insurance Plan Trust in effect became a self-insured trust operating exclusively in Louisiana without authority to conduct business in Louisiana as such.

Under the terms of the 1988 Master Administrative Agreement, Third National Bank undertook more onerous and substantial obligations concerning the Summit Insurance Trust than had previously been accepted under the 1985 Insurance Trust Agreement. Third National Bank also retained important supervisory responsibilities over Group Programs.

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8. *See* Appendix C (13a), 1988 Master Administrative Agreement (Exhibit 4, Exhibit Envelope 2).

The Master Administrative Agreement obligates Group Programs to conform its method of conducting business to the reasonable rules of the *trust*. The Agreement provides that premiums will be established by the *trust* according to the terms of the group policy; that charges and modifications made to insureds will be subject to the prior written approval of the *trust*; that Group Programs will not use policy forms, certificate forms, or administrative forms except for such forms as shall have been approved in writing by the *trust*; that the procedures for use of such forms shall be set forth in writing by the *trust*; and that books and records of Group Programs will be open for inspection by the *trust*.[9]

The Master Administrative Agreement states that Group Programs has no authority to receive any monies on behalf of the trust except in compliance with terms and conditions of receipts, policies, and contracts issued by the *trust*; and no authority to circulate advertising materials or pamphlets unless the same shall have been approved in writing by the *trust*.[10] Article II of the Agreement provides that no printing materials used in connection with administering the plan or soliciting insureds shall be used without the prior written consent of the *trust*; and that the form and content of all advertising with respect to the plans must be approved in advance in writing by the *trust*.[11]

Through its execution of the 1988 Master Administrative Agreement, Third National Bank authorized the trust to: issue policies to thousands of Louisiana residents and businesses; issue pamphlets and advertising materials to Louisiana residents and

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9. *Id.* Article I.2 (15a).

10. *Id.* (17a).

11. *Id.* Article II (16a).

businesses; and collect millions of dollars in premiums from Louisiana residents and businesses. In the Addendum to the 1988 Master Administrative Agreement, Third National Bank authorized the use of Louisiana citizens' premiums to pay millions of dollars in administrative fees to Group Programs. This administrative fee had previously been paid by Durham.[12]

Subsequent to 1988, Third National Bank received from Group Programs a copy of the Summit Insurance policy which described the coverage afforded to beneficiaries of the Summit Insurance Plan Trust. This master policy was held by Third National Bank and stated on the certificate page of the policy that the policy was to be delivered in and governed by the laws of Louisiana.[13] Subsequent to 1988, Third National Bank executed and approved an amendment to this policy which stated on its face that it was to be delivered in Louisiana.[14] Third National Bank also corresponded by mail with representatives of Group Programs in Louisiana on issues relating to the Summit Insurance Plan Trust.[15]

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12. *See* Appendix C (23a), Addendum to Master Administrative Agreement. The Addendum clearly specifies the Summit Insurance Plan Trust as the group insurance plan which Third National Bank and Group Programs, Inc. were interested in marketing. In the Addendum, Third National Bank, as trustee, authorizes Group Programs, Inc. to receive a 13% administrative fee, administer the trust and collect premiums. *See also,* Exhibit 1, p. 24, deposition of Patrick Huval dated October 25, 1990 and Exhibit 4 (Exhibit Envelope 2).

13. *See* Appendix D (25a), Certificate of Insurance for Summit Insurance Plan (Exhibit L-6, attached to Exhibit 1, Exhibit Envelope 2).

14. *See* Appendix E (27a), Amendment to Summit Insurance Plan (Exhibit 1 and attached document L-6, Exhibit Envelope 2). The amendment effective April 1, 1989, was approved by Third National Bank on March 30, 1989.

15. Third National Bank forwarded an August 11, 1989, letter to Patrick Huval informing him that the annual fee for this type of account was being

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The responsibilities undertaken by Third National Bank by virtue of the 1985 Insurance Trust Agreement and the 1988 Master Administrative Agreement which were owed to individuals and entities in Louisiana were neither ministerial nor trivial responsibilities. Further, the direct action taken by Third National Bank in executing the 1988 Master Administrative Agreement whereby Third National Bank authorized operation of the Summit Insurance Plan Trust without insurance coverage violated its affirmative duty under the Trust Agreement to terminate the trust if it was not fully funded.

The breach of these responsibilities, as well as the purposeful actions taken by Third National Bank which were directed at Louisiana citizens, subjects Third National Bank to personal jurisdiction in Louisiana

SUMMARY OF THE ARGUMENT

1. Third National Bank portrays its status as trustee of the Summit Insurance Plan Trust as a *de minimis* role that required Third National Bank merely to obtain and hold a policy or policies of group insurance. However, the Insurance Trust Agreement also obligated Third National Bank to *terminate* the trust in the event that there was a lapse in the policy or policies providing insurance coverage to the trust. Third National Bank acknowledges that the only policy that ever fully funded the trust was canceled effective June 1, 1988, yet the trust was not terminated. Failure to terminate the trust at this point was a breach of Third National Bank's affirmative duties under the Insurance Trust Agreement. If Third

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changed. Robert Mayer, vice-president of Third National Bank, also received a January 4, 1990, letter of correspondence from Patrick Huval. *See* Exhibit 8, Exhibit TNB 9B, both attached to Exhibit 8, deposition of Robert Mayer. *See also,* Exhibit L-6 attached to Exhibit 1, deposition of Patrick Huval dated October 25, 1990 (Exhibit Envelope 2).

National Bank had terminated the Summit Insurance Plan Trust when its insurance coverage was canceled, Louisiana insureds would not have been left with millions of dollars of uninsured losses. Third National Bank's duties under the Insurance Trust Agreement were neither ministerial nor trivial responsibilities. The breach of responsibilities which were undertaken for the benefit of Louisiana citizens subjects Third National Bank to personal jurisdiction in Louisiana.

2. Third National Bank failed to mention in its writ application, its execution of the 1988 Administrative Agreement whereby Third National Bank undertook more onerous and substantial obligations concerning the Summit Insurance Plan Trust than had previously been accepted under the Insurance Trust Agreement. Through its execution of the 1988 Master Administrative Agreement, Third National Bank authorized Group Programs to continue to solicit Louisiana employers and employees to purchase "coverage" through the Summit Insurance Plan Trust despite the fact that Summit's insurance coverage had been canceled. In the Addendum to the 1988 Master Administrative Agreement, Third National Bank also authorized the use of Louisiana citizens' premiums to pay for the continued solicitation, marketing and administration of the Summit Insurance Plan Trust in Louisiana. By executing the 1988 Master Administrative Agreement, Third National Bank undertook responsibilities which were owed to individuals and entities in Louisiana. The breach of these responsibilities subjects Third National Bank to personal jurisdiction in Louisiana.

3. The test for the fairness of asserting *in personam* jurisdiction over a non-resident does not turn on actual knowledge, but whether Third National Bank *could* reasonably anticipate that its conduct was such that it may be haled into court in the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). The present action arises out of

contracts executed by Third National Bank with a Louisiana corporation in which Third National Bank assumed fiduciary duties as trustee of an insurer domiciled in the State of Louisiana. If Third National Bank did not have actual knowledge that the Summit Insurance Plan Trust was conducting business in Louisiana, then it certainly should have known. The Insurance Trust Agreement provided for such conduct. The Grantor and Administrator of the trust were domiciled in Louisiana. The trust's assets were located in Louisiana. All correspondence sent by Third National Bank was mailed to Louisiana. The trust sent invoices and executed contracts to Louisiana, received payment by checks drawn on a Louisiana bank for its trustee fee, and the group policy which Third National Bank held as trustee of the Summit Insurance Plan Trust stated on the certificate that the policy was to be delivered in and governed by the laws of Louisiana. The Summit Insurance Plan Trust operated exclusively in Louisiana from 1985 to 1988, and primarily in Louisiana thereafter. If a trustee undertakes fiduciary obligations to the beneficiaries of a Louisiana-domiciled insurance trust of the quality and nature of those contained in the Insurance Trust Agreement and the Master Administrative Agreement, then the trustee should reasonably anticipate being "haled into" court in Louisiana for the damages resulting from the trustee's breaches. Accordingly, Louisiana's assertion of jurisdiction over Third National Bank is fair.

4. Inherent in Third National Bank's duty to terminate the Summit Insurance Plan Trust upon lapse or termination of the group insurance policy is the duty to know whether and when such coverage lapses. There were annual anniversary dates for the group policy upon which the policy could be terminated. This provision was contained in the policy which Third National Bank possessed. The policy was terminated effective June 1, 1988, one of these anniversary dates, yet the Bank never checked to see whether the policy was still in force. Whether Third National Bank had actual knowledge of the cancellation of the master policy is

irrelevant. It had a duty to acquire such knowledge and failed in this respect. Further, because Third National Bank authorized continued operation of the trust and failed in its affirmative duty to terminate the trust when the insurance coverage ceased, Louisiana citizens have incurred millions of dollars of uninsured losses. Third National Bank's breach of its affirmative duties set forth above subjects Third National Bank to jurisdiction in Louisiana.

5. The First Circuit Court of Appeal's decision does not conflict with *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 1283 (1958). Unlike the trust involved in *Hanson*, the Summit Insurance Plan Trust at all times maintained extremely close ties with the State of Louisiana. Summit's assets were held and administered in Louisiana. The State of Louisiana exercised regulatory authority over the Summit Insurance Plan Trust. Third National Bank directly authorized continued operation of the trust in Louisiana without proper funding or regulatory authority through execution of the 1988 Master Administrative Agreement. Third National Bank directly authorized an amendment to the very insurance policy which was being sold to Louisiana citizens. Third National Bank also authorized the use of Louisiana citizens' premiums to pay millions of dollars in administrative fees. Summit's close relation to and regulation by the State of Louisiana, as well as the direct actions of Third National Bank aimed at Louisiana beneficiaries stand in sharp contrast to the circumstances of *Hanson* and compel the assertion of personal jurisdiction rather than denial.

REASONS FOR DENYING THE WRIT

I. MINIMUM CONTACTS

A. THIRD NATIONAL BANK HELD A CRITICAL ROLE AS TRUSTEE OF A LOUISIANA INSURANCE TRUST EVEN BEFORE EXECUTION OF THE 1988 MASTER ADMINISTRATIVE AGREEMENT.

Third National Bank portrays its status as trustee of the Summit Insurance Plan Trust as a *de minimis* role that required Third National Bank merely to obtain and hold a policy or policies of group insurance. To the contrary, Third National Bank's position as trustee was fundamental to the creation and continued existence of the Summit Insurance Plan Trust. First, the requirement that Third National Bank obtain and maintain in effect a policy or policies of insurance providing full coverage to beneficiaries of the Summit Insurance Plan Trust was indispensable to the very concept of the trust. Further, the Insurance Trust Agreement required Third National Bank to immediately terminate the trust in the event that there was a lapse in the policy or policies providing such coverage. Indeed, the failure to maintain insurance coverage and the failure to terminate the trust when the insurance coverage lapsed goes to the heart of the action asserted against Third National Bank.

The Insurance Trust Agreement required Third National Bank, acting through Group Programs, Inc., to make application to an insurance company:

> . . . for the issuance of a policy or policies of group insurance, which term shall include, but not be limited to, all forms of group or franchise life, health, accident, and disability

> insurance to be issued *to the Trustee* . . .(emphasis added).[16]

The agreement further obligated Third National Bank to "hold such policy or policies of group insurance . . . for the purpose of obtaining and *maintaining* the policy or policies *in force* . . . (emphasis added)."[17]

Not only did the Insurance Trust Agreement obligate Third National Bank to maintain in effect a group master insurance policy, that agreement also obligated Third National Bank to *terminate* the trust if the insurance coverage terminated, expired, lapsed or was canceled for any reason. The Insurance Trust Agreement required Third National Bank to review any proposed substitute or successor insurance company and approve the successor insurance company "in writing in advance." If such fully insured coverage through an approved successor company could not be obtained "without any gaps in coverage," then Third National Bank was obligated to immediately terminate the Summit Insurance Plan Trust.[18]

According to the terms of the Insurance Trust Agreement, Third National Bank was under a fiduciary duty to *maintain* a group master insurance policy in force, providing full coverage to the beneficiaries of the trust or to *terminate* the trust if full coverage could not be maintained. The Durham policy was

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16. *See* Appendix B (6a), Insurance Trust Agreement, section 3 (Exhibit 2, Exhibit Envelope 2).

17. *See* Appendix B (7a), Insurance Trust Agreement, section 3(b) (Exhibit 2, Exhibit Envelope 2).

18. *See* Appendix B (9a), Insurance Trust Agreement, section 7B (Exhibit 2, Exhibit Envelope 2).

canceled effective June 1, 1988. There was no replacement coverage. Third National Bank failed to terminate the trust. Instead, Third National Bank authorized continued operation of the trust as a self-insured trust without regulatory authority or proper funding. The continued operation of the Summit Insurance Plan Trust subsequent to June 1, 1988, was a continuing breach of fiduciary duty which resulted in millions of dollars of losses to thousands of Louisiana citizens.[19]

Third National Bank maintains that its obligations to obtain and maintain full insurance coverage for the trust (or terminate the trust if such coverage lapsed) were "ministerial" duties. Regardless of how Third National Bank tries to minimize its duties, the fact is that the breach of its obligations to obtain and maintain insurance coverage (or terminate the trust) resulted in millions of dollars of losses to thousands of Louisiana residents. This suit arises out of Third National Bank's breach of these critical fiduciary duties which Third National Bank owed to Louisiana employee and employer members of the Summit Insurance Plan Trust.

B. THIRD NATIONAL BANK ENABLED AND AUTHORIZED THE SUMMIT INSURANCE PLAN TRUST TO OPERATE IN LOUISIANA SUBSEQUENT TO JUNE 1, 1988, WITHOUT PROPER FUNDING OR REGULATORY AUTHORITY.

Third National Bank failed to mention in its writ application, its execution of the 1988 Master Administrative Agreement

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19. As of April 15, 1991, the claims filed against Summit Insurance Plan Trust totalled not less than $7,544,640.28. *See* Exhibit 29, affidavit of Sarah Bridendall; Exhibit 12, affidavit of Caroline Brock. There are not less than 4,150 claimants who have unpaid health claims, of which not less than 3,075 claimants were Louisiana residents. *See* Exhibit 12 (Exhibit Envelope 2).

whereby Third National Bank undertook more onerous and substantial obligations concerning the Summit Insurance Plan Trust.[20] In the 1988 Master Administrative Agreement, Third National Bank explicitly grants broad authority to Group Programs and retains important supervisory responsibilities. Third National Bank's execution of the Master Administrative Agreement enabled Group Programs to continue operating the Summit Insurance Plan Trust after the only insurance policy that had funded the trust was canceled. In the Agreement, the Summit Insurance Plan Trust is referred to interchangeably as the "trust" and "the Company". The individual signing the Administrative Agreement for Third National Bank in its capacity as Trustee of the Summit Insurance Plan Trust was Marjorie Kirkpatrick, a long-time employee of Third National Bank.[21]

The Master Administrative Agreement obligates Group Programs to conform its method of conducting business to the reasonable rules of the *trust*. The Agreement provides that premiums will be established by the *trust* according to the terms of the group policy; that charges and modifications made to insureds will be subject to the prior written approval of the *trust*; that Group Programs will not use policy forms, certificate forms, or administrative forms except for such forms as shall have been approved in writing by the *trust*; that the procedures for use of such forms shall be set forth in writing by the *trust*; and that books and records of Group Programs will be open for inspection by the *trust*.[22]

According to Article III of the Master Administrative Agreement, the *trust* was to set the underwriting standards for

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20. *See* Appendix C (13a), the 1988 Master Administrative Agreement (Exhibit 4, Exhibit Envelope 2).

21. *Id.* (22a).

22. *Id.* Article I.2 (15a).

issuing coverage to insureds. The *trust* was to direct the transmittal of premium notices, lapse notices, and application forms to insureds. The *trust's* approval was required on all claim forms and claim materials being provided to the trust's insureds. No assignment, transfer, or disposal of the commissions, administration, or other fees by Group Programs could be made at any time without written approval of the *trust*. Further, the duties of Group Programs could not be delineated to any person without prior written consent of the *trust*.[23]

The Master Administrative Agreement provides that: the *trust* shall be notified of claims against Group Programs; the *trust* shall have a right to defend such claims in its own name; and the *trust* shall at all times have the right to settle such claims. The Agreement further provides that the *trust* shall have access to all ledgers, records, account files, and other documents generated by Group Programs.[24]

The Master Administrative Agreement states that Group Programs has no authority to receive any monies on behalf of the trust except in compliance with terms and conditions of receipts, policies, and contracts issued by the *trust*; and no authority to circulate advertising materials or pamphlets unless the same shall have been approved in writing by the *trust*.[25] Article II of the Agreement provides that no printing materials used in connection with administering the plan or soliciting insureds shall be used without the prior written consent of the *trust*, and the form and content of all advertising with respect to the plans must be approved in advance in writing by the *trust*.[26]

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23. *Id.* Article III (18a).

24. *Id.* Article I.1.(d) (14a).

25. *Id.* Article I.2(g) (17a).

26. *Id.* Article II (17a).

Third National Bank acknowledges that the Durham Life Insurance policy terminated as of May, 1988, yet the trust was not terminated. (Applicant's Brief, p. 6). Third National Bank, instead, executed the 1988 Master Administrative Agreement which authorized continued operation of Summit as a self-insured trust without proper funding or regulatory authority.

Third National Bank voluntarily executed the 1988 Master Administrative Agreement. Third National Bank maintains that it did not actually exercise most of its rights and obligations under that agreement. By executing the 1988 Master Administrative Agreement, however, Third National Bank undertook fiduciary responsibilities for the benefit of the insureds and beneficiaries of the Summit Insurance Plan Trust, which were neither ministerial nor trivial. The breach of these duties undertaken for the benefit of Louisiana citizens, subjects Third National Bank to personal jurisdiction in Louisiana.

C. THIRD NATIONAL BANK DIRECTED ACTIONS AT LOUISIANA BY AUTHORIZING PAYMENT OF MILLIONS OF DOLLARS IN ADMINISTRATIVE FEES FROM A LOUISIANA DOMICILED INSURANCE TRUST AND BY AUTHORIZING AMENDMENTS TO THE LOUISIANA INSURANCE POLICIES BEING SOLD TO LOUISIANA CITIZENS.

In addition to its central role as trustee of the Summit Insurance Plan Trust, and in addition to the critical obligations undertaken by Third National Bank in the 1985 Insurance Trust Agreement and the 1988 Master Administrative Agreement, Third National Bank took specific actions in its capacity as trustee, which were directed at Louisiana citizens. These actions taken directly by Third National Bank (exclusive of any actions taken by Group Programs) form yet an additional basis for exercising personal jurisdiction.

The group insurance policy for the benefit of employers and others participating in the Summit Insurance Plan Trust was issued to Third National Bank and was physically held by Third National Bank.[27] The policy provided coverage to thousands of Louisiana residents who incurred medical expenses with Louisiana medical providers.[28] Third National Bank issued invoices to Louisiana, and received payments from Louisiana for its annual fee for acting as trustee of the Summit Insurance Plan Trust from 1985 through 1990.[29] Third National Bank received a copy of the Summit Insurance Plan which described the coverage afforded to beneficiaries of the Summit Insurance Plan Trust, and maintained control of this document and other related documents received from Group Programs.[30] The Summit Insurance policy held by Third National Bank states on the certificate page that the policy is to be delivered in and governed by the laws of Louisiana.[31] Subsequent to May of 1988, Third National Bank executed and approved an Amendment to the Summit insurance policy.[32] This

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27. Third National Bank received a copy of the Summit Insurance Trust Plan No. 3174 from Group Programs, Inc. which plan was forwarded by employees of Group Programs, Inc. to Third National Bank, as trustee of Summit Insurance Plan Trust. Third National Bank also received a copy of the Group Insurance Plan No. 3174 issued by the Summit Insurance Plan Trust and maintained this document in its vault. *See* Plaintiff's Exhibit 8, Robert Mayer deposition, pp. 37-40; and documents TNB 51, TNB 6, TNB 7 attached to Mayer deposition (Exhibit Envelope 2).

28. *See* footnote 19.

29. *See* footnote 5.

30. *See* footnote 27.

31. *See* footnote 13; *see also*, footnote 27.

32. *See* footnote 14; *see also*, footnote 27.

was aimed directly at Louisiana citizens because it altered the very policy that was being sold and delivered in Louisiana. Third National Bank directly corresponded with representatives of Group Programs in Louisiana on issues relating to the Summit Insurance Plan Trust.[33]

Through its execution of the 1988 Master Administrative Agreement, Third National Bank authorized the trust to: issue policies to thousands of Louisiana residents and businesses; issue pamphlets and advertising materials to Louisiana residents and business; and collect millions of dollars in premiums from Louisiana residents and businesses. In the Addendum to the 1988 Master Administrative Agreement, Third National Bank authorized the use of Louisiana citizens' premiums to pay millions of dollars in administrative fees to Group Programs for the continued marketing of the Summit Insurance Plan Trust in Louisiana.[34]

The fiduciary duties undertaken by Third National Bank by virtue of the 1985 Insurance Trust Agreement and the 1988 Master Administrative Agreement were owed to individuals and entities located and domiciled in Louisiana. The breach of these duties, as well as the purposeful actions taken by Third National Bank which were directed at Louisiana citizens, subjects Third National Bank to personal jurisdiction in Louisiana.

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33. *See* footnote 15.

34. *See* footnote 12.

II. FAIR PLAY AND SUBSTANTIAL JUSTICE

A. THIRD NATIONAL BANK KNEW OR SHOULD HAVE KNOWN THAT THE SUMMIT INSURANCE PLAN TRUST WAS BEING MARKETED IN LOUISIANA.

At the time that Third National Bank and Group Programs entered into the Trust Agreement which established the Summit Insurance Plan Trust, Group Programs, the Grantor and Administrator of Summit, was a Louisiana corporation that maintained its principal place of business in Louisiana. Patrick Huval, the incorporator, majority shareholder, a director, vice president and chief executive officer of Group Programs, was domiciled in Louisiana.[35] Third National Bank was a compensated trustee for Summit. Every year it submitted an invoice to the trust in Louisiana and every year Third National Bank received payment in the form of a check drawn on a bank in Louisiana.[36] The Trust Agreement required that Third National Bank, acting through Group Programs, procure a group master policy to fund the insurance trust to an insurance company "authorized to conduct the business of insurance in the State of Tennessee, *and other states in which Participating Employers are located* . . . (emphasis added)".[37] It was clear from the very terms of the instrument that created the trust (to which instrument Third National was a party) that Summit would offer insurance to employers in "other states."

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35. *See* Exhibit 16, January 24, 1991 deposition of Patrick Huval, p. 5. *See also*, Exhibit 21, paragraph 3; Exhibit 5 (Exhibit Envelope 2).

36. *See* footnote 5.

37. *See* Appendix B (17a), Insurance Trust Agreement, page 1 clause 3.A. (Exhibit 2, Exhibit Envelope 2).

The Summit Insurance Plan Trust was extremely active in the State of Louisiana. From 1985 until 1988, Summit operated *exclusively* in Louisiana, and primarily in Louisiana thereafter. Summit's assets were physically located in Louisiana.[38] The Summit Trust was the vehicle by which millions of dollars in insurance premiums were collected from Louisiana residents. Claims against all insurance policies sold by Summit were reviewed and processed in Louisiana, and the trust was subject to regulation by the Louisiana Commissioner of Insurance.[39] The group policy entitled "The Summit Insurance Plan," which Third National held as trustee stated on the certificate that "[t]his policy

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38. *See* Exhibits 9 and 10; Exhibit 9, Interrogatory No. 20 propounded by the Commissioner of Insurance asked Huval and Group Programs, Inc. to identify accounts maintained by Summit Insurance Plan. In response (Exhibit 10), Huval and Group Programs, Inc. identified three separate accounts, all maintained at Farmers & Merchants Bank & Trust Company in Breaux Bridge, Louisiana. Premiums received by Summit Insurance Plan Trust were deposited into those accounts. *See also,* Exhibit 11, Flores' deposition, pp. 59-60, 68; Exhibit 16, Patrick Huval January 24, 1991, deposition at pp. 31-37. These bank accounts and monies received into those accounts were clearly identified as assets of the Summit Insurance Plan Trust. Dianne Flores, the president, manager, and a shareholder in Group Programs, Inc., was responsible for supervising the claims processing and claims payments for employees and beneficiaries insured by the Summit Insurance Plan Trust. Excerpts from her deposition were attached as Exhibit 11. Ms. Flores testified that premiums received from employer/employee participants of the Summit Insurance Plan Trust prior to June 1, 1988, were deposited at Farmers and Merchants Bank in Breaux Bridge, Louisiana (Exhibit Envelope 2).

39. *See* Exhibit 11, Flores' deposition, pp. 59-60, 68; Exhibit 16, January 24, 1991 deposition, pp. 31-37. Dianne Flores, the president, manager, and a shareholder of Group Programs, Inc., was responsible for supervising the claims processing and claims payments for employees and beneficiaries insured by the Summit Insurance Plan Trust. Excerpts from her deposition were attached as Exhibit 11. *See also,* Exhibit 11, pp. 31, 46, 47, 59-62, 65-79, 85-86 (Exhibit Envelope 2).

is *delivered in and is governed by the laws of Louisiana* (emphasis added)." Third National approved and executed an amendment to this policy in March of 1989.[40]

It should have been apparent to Third National Bank at this point that Summit could and would be doing business in Louisiana as the terms of the Insurance Trust Agreement provided that the trust would solicit participants in other states, the grantor and administrator of the trust was domiciled in Louisiana, Third National was sending invoices and executed contracts to Louisiana, and was being paid its fee on checks drawn on a bank in Louisiana. The test for fairness does not turn on actual knowledge, but whether Third National *could* reasonably anticipate that its conduct was such that it may be haled into court in the forum state. *Burger King Corp v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985); *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567, 62 L. Ed. 2d 490, 501 (1980).

If Third National Bank did not have actual knowledge that Summit was conducting business in Louisiana, then it certainly should have known. Knowledge of Summit's activity should be imposed by virtue of the quality and nature of Third National Bank's contractual and legal obligations under the 1985 Insurance Trust Agreement and the 1988 Master Administrative Agreement. Further, such knowledge should be imposed by virtue of the aforementioned evidence which should have alerted Third National Bank to the fact that Summit was conducting business *solely* in Louisiana until 1988 and primarily in Louisiana thereafter.[41]

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40. *See* footnote 13; *see also*, footnote 14.

41. *See* footnote 1.

The trial court did not pass on the question of whether Third National had or should have had knowledge of the Summit policies sold in Louisiana. As can be seen from the above cited evidence in the record, the Commissioner of Insurance demonstrated that Third National Bank had very substantial ties and contacts with the State of Louisiana such that Third National Bank knew or should have known of Summit's activity in Louisiana. The First Circuit Court of Appeal has review of both questions of law and fact. A factual determination made by the appellate court which was not made by the trial court is proper judicial procedure as long as there exists evidence in the record upon which the appellate court can base its finding. *Guillbeau v. C&D Reprographics-Lafayette, Inc.*, 568 So. 2d 206 (La. App. Third Cir. 1990), *writ denied*, 571 So. 2d 653. Accordingly, the appellate court determined from the evidence in the record that Third National did have knowledge of Summit's marketing of insurance policies in Louisiana.[42]

The present action is brought by the Louisiana Commissioner of Insurance, as Liquidator of the Summit Insurance Plan Trust, to recover damage caused to Louisiana citizens due to Third National Bank's negligence and breach of fiduciary duty to provide a solvent and fully insured health plan for Louisiana employee and employer members of the Summit Insurance Plan Trust. If a trustee undertakes fiduciary obligations to the beneficiaries of a Louisiana-domiciled insurance trust of the quality and nature of those listed above, then the trustee should reasonably anticipate being "haled into" court in Louisiana for the damages suffered by those beneficiaries as a result of the trustee's breaches. Third National Bank's contacts or relationship with the State of Louisiana were a foreseeable result of Third National Bank's purposeful conduct directed at Louisiana residents.

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42. *See* Appendix A (4a), Appellate Decision.

B. THIRD NATIONAL BANK KNEW OR SHOULD HAVE KNOWN THAT THE DURHAM LIFE INSURANCE GROUP POLICY HAD BEEN CANCELED.

The trial court stated that Third National Bank "was not notified of Durham's termination of the master policy," apparently suggesting that the bank would not be liable for failing to "discover" that the policies it was holding and had a duty to maintain had expired.[43] Although Third National Bank claims that its duties under the Insurance Trust Agreement were extremely limited, the bank does not deny that it had an obligation to maintain the policy itself. No matter how limited an interpretation is given to its duties under the Insurance Trust Agreement, Third National Bank must have had an obligation to know whether the policy it had a duty to maintain had been canceled. Further, inherent in the duty to terminate the trust upon lapse or termination of the group insurance policy is the duty to know whether and when such policy lapses. There were annual anniversary dates for the policy upon which the policy could be terminated. This provision was contained in the policy which Third National Bank had in its possession. The policy was terminated effective June 1, 1988, one of these anniversary dates, yet the Bank never checked to see whether the policy was still in force.[44]

When Third National Bank executed the 1988 Master Administrative Agreement authorizing the continued operation of the trust, it should have been fully aware that the trust would be maintained without the required insurance coverage due to the very terms of the agreement it was executing and the duties it was

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43. *See* Trial Court's Written Reasons for Judgment, p. 2 (Rec. unenumerated – *see* Vol. 3 of 4).

44. *See* Exhibit 1, pp. 19, 26, 27, the October 25, 1990 deposition of Patrick Huval (Exhibit Envelope 2).

authorizing Group Programs to perform. After Durham Life ceased providing coverage for Summit, only two parties remained, Third National Bank and Group Programs. Durham Life Insurance Company had absolutely no role after June 1, 1988. It did not provide insurance, and it did not authorize or direct Group Programs to continue operating or administering the insurance coverage provided under the Summit Insurance Plan.[45] However, Third National *did* authorize the continued operation of the Summit Insurance Plan Trust and the payment to Group Programs of a 13% administrative fee from Louisiana citizens' insurance premiums.[46]

The preamble to the 1988 Master Administrative Agreement states that Third National Bank and Group Programs, Inc. are "desirous of entering into an Agreement reflecting certain rights and *obligations of the parties* with respect to the *marketing* and *administration* of group insurance plans, including those indicated in the *attached Addenda* and those which may be hereafter attached" (emphasis added). The group insurance plan indicated in the addendum was the "Summit Insurance Plan Trust." There was no policy of insurance (*i.e.*, such as the Durham Life Insurance Company policy identified in the previous agreement) referenced in the attached addendum.[47] Accordingly, Third National Bank should have known that it was authorizing the trust to continue as a self-funded insurance trust.

Even if Third National Bank did not have actual knowledge of Durham's cancellation of the only policy funding the Summit Insurance Plan Trust, it had a duty to acquire such knowledge.

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45. *Id.*

46. *See* footnote 12.

47. *See* footnote 27.

Inherent in its duty to terminate the trust upon lapse or cancellation of the group policy is the duty to know whether and when such policy lapses. Third National Bank failed in this respect. Because Third National Bank authorized continued operation of the trust and failed in its affirmative duty to terminate the trust when its insurance coverage lapsed, Louisiana citizens have incurred millions of dollars of uninsured losses.[48]

III. HANSON IS DISTINGUISHABLE IN THAT THE SUMMIT INSURANCE PLAN TRUST AT ALL TIMES MAINTAINED EXTREMELY CLOSE TIES WITH THE STATE OF LOUISIANA.

Third National Bank argues that the case of *Hanson v. Denkla,* 357 U.S. 235, 78 S. Ct. 1228 L. Ed. 2d 1283 (1958), is factually similar to the present case and compels a finding of no personal jurisdiction. *Hanson* ruled that a Florida court lacked personal jurisdiction over a Delaware company acting as trustee of a trust fund. In reaching its decision, the Supreme Court specifically noted that (1) none of the trust's assets had ever been held or administered in Florida, 78 S. Ct. at 1238; (2) the settlor was not domiciled in the forum state at the time the trust was formed, 78 S. Ct. at 1239; and (3) the relationship with the forum state only began years after the trust was formed, when the settlor unilaterally moved to the forum state. *Id.* These facts were noted and expressly relied upon by the court in denying jurisdiction. None of these critical findings are present in this case. Summit's assets *were* in Louisiana. Summit received millions of premium dollars into separate bank accounts held in its name at the Farmers and Merchants Bank in Breaux Bridge, Louisiana.[49] Evidence adduced in the district court reveals, for example, that Summit deposited

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48. *See* footnote 19.

49. *See* footnote 38.

$20,417,259.31 into Louisiana bank accounts in 1989 alone.[50] The individuals authorized to issue checks on the accounts were Louisiana residents. These accounts were maintained from the time the Summit Insurance Plan Trust was created in 1985 until its liquidation in 1990. Also, the grantor, Group Programs, was *always* a Louisiana domiciliary.[51]

In denying jurisdiction, the *Hanson* Court also distinguished the facts of *Hanson* from those of *McGee v. International Life Ins. Co.*, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223. In *McGee*, the Supreme Court found that California had personal jurisdiction over a nonresident defendant who solicited a reinsurance agreement with a resident of California. The *Hanson* Court expressly noted that no instances were disclosed in the *Hanson* record where the trustee performed any acts directed at Florida which bore the same relationship to the *Hanson* trust agreement as the solicitation of the insurance contract in *McGee*. *Hanson*, 78 S. Ct. at 1239. Again, in the instant case, this critical finding is not present. To the contrary, the actions of Third National Bank in executing the 1988 Master Administrative Agreement, the Addendum thereto, and the amendment to the Louisiana policy offered by Summit, bears the same relationship to the Summit Insurance Plan Trust as the solicitation of the insurance contract in *McGee*. Through its execution of the 1988 Master Administrative Agreement, Third National Bank authorized continued solicitation and marketing of Summit insurance policies to Louisiana citizens. Third National Bank also authorized the use of Louisiana citizens' premiums to pay for this continued marketing of Summit in Louisiana.

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50. Exhibit 15 sets forth that the Summit Insurance Plan Trust received $20,326,020.92 in premiums in 1989 alone. This amount does not include $82,777 in premiums received from Tangipahoa Parish by the Summit Insurance Plan Trust during that year (Exhibit Envelope 2).

51. *See* footnote 35.

Unlike the trust involved in *Hanson,* the Summit Insurance Plan Trust at all times maintained extremely close ties with the State of Louisiana. The *Hanson* trustee did not hold a group master insurance policy which stated that the insurance policy would be delivered in and subject to the laws of Florida. The *Hanson* trustee did not expressly authorize amendments to the very product which was being sold to thousands of Florida citizens. The *Hanson* trust did not, of course, provide insurance coverage to Florida citizens. The *Hanson* trust obviously was not placed in rehabilitation or liquidation by the State of Florida. The *Hanson* trust was not administered by a Florida corporation in Florida under the direct authority of the trustee. The *Hanson* trust did not hold and maintain assets in Florida, review insurance claims of Florida residents or play claims from a Florida bank account. The *Hanson* trustee did not enter into multiple contracts with a Florida corporation to administer the assets of the trust in Florida.

Finally, in *Hanson,* the fact that Florida had not enacted special legislation concerning regulation of the trust at issue was specifically noted and relied upon in finding that Florida did not have personal jurisdiction over the trust's nonresident trustee. *Hanson,* 78 S. Ct. at 1239. In the present case, the Summit Insurance Plan Trust was a multiple employer insurance trust which is subject to close regulation by the Louisiana Commissioner of Insurance. LSA R.S. 22:3001-3002. The State of Louisiana has a significant interest in regulating the business of insurance within its borders.[52] In fact, the Summit trust was ultimately placed in liquidation by the State of Louisiana. The Commissioner of Insurance is bringing this suit on behalf of the more than 3,075 Louisiana residents whose medical claims totalling more than seven million dollars ($7,000,000) remain unpaid because Third National Bank authorized continued operation of the trust and failed in its affirmative duty to terminate

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52. *See, e.g.,* McCarran-Ferguson Act, 15 U.S.C. § 1012.

the trust when its coverage ceased. These facts stand in stark contrast to the facts of *Hanson,* and compel the assertion of personal jurisdiction rather than denial.

CONCLUSION

The trial court erred in finding that Third National Bank did not have contacts with the State of Louisiana to support the exercise of personal jurisdiction. Third National Bank maintained a substantial relationship with Louisiana and owed substantial duties to the Louisiana citizens and businesses who were participants in the Summit Insurance Plan Trust. The trust was created upon Third National Bank's execution of the 1985 Insurance Trust Agreement. Third National Bank was obligated to obtain and maintain a group master policy which would provide fully insured coverage to the Louisiana citizens and businesses who were beneficiaries of the Summit Insurance Plan Trust.

Third National Bank was obligated to terminate the Summit Insurance Plan Trust if the fully insured coverage terminated, expired, lapsed or was canceled for any reason. This duty was owed by Third National Bank to the Louisiana beneficiaries of the Summit Insurance Plan Trust. It is uncontested that no replacement policy was obtained when the Durham Life Insurance Policy lapsed as of March 31, 1988. As a result, millions of dollars in claims have been incurred by thousands of Louisiana residents and have not been paid. If Third National Bank had terminated the Summit Insurance Plan Trust when its insurance coverage was canceled, these Louisiana insureds would not have been left without insurance coverage.

Marjorie Kirkpatrick, the trust officer with Third National Bank who was in charge of the Summit Insurance Plan Trust file, executed the 1988 Master Administrative Agreement which authorized Group Programs to continue to solicit Louisiana

employers and employees to purchase insurance through the Summit Insurance Plan Trust, despite the fact that Summit was without coverage. The express purpose of the 1988 Master Administrative Agreement was for the "marketing and administration" of the Summit Insurance Plan Trust. Third National Bank received and reviewed plan documents describing and amending the coverages issued by the Summit Insurance Plan Trust to Louisiana citizens.

The Commissioner of Insurance has demonstrated that Third National Bank's relationship to Louisiana was a foreseeable result of its purposeful conduct and of the legal obligations which arose therefrom. The Commissioner of Insurance has demonstrated that Third National Bank has established substantial contacts with Louisiana. The Appellate Court's reversal of the ruling granting Third National Bank's exception of personal jurisdiction was proper.

The appellate court's decision does not conflict with *Hanson* because unlike the trust involved in that case, the Summit Insurance Plan Trust at all times maintained extremely close ties with the State of Louisiana. Summit's assets were held and administered in Louisiana. Louisiana's Department of Insurance exercised regulatory authority over Summit. Third National Bank authorized continued operation of the trust as a self-insurer through execution of the 1988 Master Administrative Agreement without proper funding or regulatory authority. Third National Bank also directly authorized an amendment to the very insurance policy which was being sold to Louisiana citizens. Summit's close relation to and regulation by the State of Louisiana and the direct actions of Third National Bank directed at Louisiana beneficiaries are in sharp contrast to the circumstances of *Hanson* and compel the assertion of personal jurisdiction rather than denial.

The appellate court did not depart from proper judicial

procedure in reaching its decision, nor does its decision conflict with any controlling precedent. Accordingly, Third National Bank's Application for Writ should be denied.

Respectfully submitted,

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APPENDIX A — APPELLATE DECISION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 92 CA 1625

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA

VERSUS

GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE V. FLORES, THOMAS HUVAL, DALE F. HUVAL, KATHRYN H. PONTIFF

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, NUMBER 364,878, IN AND FOR THE PARISH OF EAST BATON ROUGE, LOUISIANA, HONORABLE MICHAEL PONDER, JUDGE PRESIDING.

BEFORE: LOTTINGER, C.J., FOIL, AND FOGG, JJ.

LOTTINGER, CHIEF JUDGE [stamped] JUL 2 1993

This appeal is brought by the Insurance Commissioner for the State of Louisiana from a judgment dismissing a Tennessee bank from an insurance liquidation proceeding on grounds that the bank does not have sufficient minimum contacts with Louisiana to render the bank subject to the personal jurisdiction of Louisiana's courts.

Appendix A

FACTS

In 1984, a Louisiana resident, Patrick Huval, approached a Tennessee insurance broker, Gibbs Smith, for information about setting up a multiple employer insurance trust in Louisiana. Smith had previously set up such a trust with Third National Bank in Nashville (the Bank) as trustee, and approached the Bank to act as trustee for Huval's trust, the Summitt Insurance Plan Trust (the Trust). The Bank has no offices or employees in Louisiana, and otherwise conducts no business in this state.

Huval had his Louisiana insurance company, Group Programs, Inc., act as the administrator for the Trust, leaving the Bank with few duties other than to hold a group master insurance policy from which Group Programs' Louisiana customers would obtain coverage for health and other insurances. The Bank properly obtained such a policy from Durham Life Insurance Company (Durham), through Smith's efforts. The Trust was confected in 1985 by means of an Insurance Trust Agreement between the Bank and Group Programs, and a Master Administrative Agreement between Group Programs and Durham. Group Programs operated the Trust from its offices in Breaux Bridge, Louisiana.

In 1988, Durham allowed the policy to expire and declined to renew it. No other policy of insurance was obtained to replace the lapsed Durham policy. The Trust was now uninsured, and although the 1985 Insurance Trust Agreement provided that the Trust would immediately terminate if coverage lapsed unless new coverages could be obtained without gaps, Huval continued to operate Group Programs and the Trust. Huval reengineered the Trust by entering into a second Master Administrative Agreement between Group Programs and the Trust, now standing in the place of Durham as its

own insurer, in June of 1988. Marjorie Kirkpatrick, the Bank's employee, signed this agreement on behalf of the Trust.

In 1990, the scheme unraveled when the Trust was placed in liquidation by petition of the Insurance Commissioner. In its attempt to marshall the assets of the Trust, the Insurance Commissioner named the Bank as a defendant for breaching fiduciary duties owed under the trust agreement to trust beneficiaries: the Louisiana residents who were employees of the companies subscribing for insurance coverage under the trust plan.

The Bank resisted the suit on grounds that it is not subject to the personal jurisdiction of Louisiana courts under the long-arm statute, La.R.S. 13:3201. It succeeded by asserting via the declinatory exception raising the objection of lack of personal jurisdiction that it lacks sufficient minimum contacts with the state to satisfy the due process requirements of the Louisiana and United States constitutions.

ASSIGNMENT OF ERROR

In its appeal the Insurance Commissioner contends that the district court erred in dismissing the Bank for lack of personal jurisdiction and erred in finding that the Bank had not established minimum contacts with the State of Louisiana so as to subject it to Louisiana's long arm jurisdiction. La.R.S. 13:3201 *et seq.*

DISCUSSION

The Louisiana long-arm statute provides several bases for the assertion of jurisdiction over nonresidents, the broadest of which turns upon a finding of minimum contacts and fundamental fairness, the more specific enumerations being sufficient in and of

themselves for the assertion of jurisdiction. *See* La.R.S. 13:3201, and the Comments thereunder. *See also Thompson v. Great Midwest Fur Company,* 395 So.2d 840, 842-843 (La. App. 1st Cir. 1981). The purpose of the long-arm statute is to extend personal jurisdiction of Louisiana courts over nonresidents to the full limits of due process, i.e., to any nonresident who has had minimal contacts in the state. *Thompson v. Great Midwest Fur Company,* 395 So.2d at 843. The section must be liverally interpreted in favor of finding jurisdiction. *Id.*

In this case, we find a bank which acted, from 1985 through 1990, as the paid trustee of an insurance trust operating at one time solely in this state, which trust was formed only as a result of the compensated actions of the nonresident bank in entering into the Insurance Trust Agreement. We find that these facts constitute sufficient minimum contacts by the Bank with Louisiana to satisfy the due process requirements of the Louisiana and United States constitutions, such that it is fair to require the Bank to appear in Louisiana's courts. *See Thompson,* 395 So.2d at 842.

The Bank knew at the inception of the trust that Huval and Group Programs were setting up business in Louisiana. The Bank further knew that it was receiving its trustee's fee as a result of the business activities of Huval and Group Programs in Louisiana. The relative amount of this fee to the premiums paid by the subscribers is irrelevant.

Therefore, we reverse the trial court's erroneous findings that the bank did not have sufficient minimum contacts with the state to justify the extension of long-arm jurisdiction over it.

Appendix A

CONCLUSION

Therefore, for the above and foregoing reasons the judgment of the trial court is REVERSED and this case is REMANDED for further proceedings. REVERSED AND REMANDED.

APPENDIX B — 1985 INSURANCE TRUST AGREEMENT

INSURANCE TRUST AGREEMENT

This Trust Agreement is made and entered into this *8* day of *March*, 1985 by and between *Group Programs, Inc.*, as Grantor, ("Grantor") and Third National Bank in Nashville, a National Banking Association with its principal offices in Nashville, Tennessee as Trustee ("Trustee").

For and in consideration of the mutual convenants contained herein and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the parties hereto agree as follows:

1. *Recitals.* Grantor desires to establish a Trust for the purpose of holding one or more group master insurance policies issued by one or more insurance companies for the purpose of providing insurance benefits to various employees of participating employers (Participating Employers) and their covered dependents who accept in writing the terms of this Trust Agreement and agree to be bound by it. Grantor intends to act as Administrator and agrees to accept the responsibility for all administrative duties required in connection with any such group master policy conditions hereinafter set forth.

2. *Establishment of Trust.* The Trustee declares that it will receive and hold, as Trustee, the group master insurance policy or policies described herein, and that it will administer the Trust on the terms and conditions hereinafter set out. This Trust shall be known as the:

Summitt Insurance Plan Trust ("Trust").

3. *Duties of Trustee.*

Appendix B

A. The Trustee, acting through the Grantor, shall make application to an insurance company or companies, duly authorized to conduct the business of insurance in the State of Tennessee, and other states in which Participating Employers are located, for the issuance of a policy or policies of group insurance, which term shall include, but not be limited to, all forms of group or franchise life, health, accident, and disability insurance, to be issued to the Trustee, providing such benefits for Participants or their covered dependents as the Grantor, acting in its capacity as Administrator shall determine from time to time, in its sole discretion. Such policy or policies may contain such provisions and be subject to such limitations and conditions as Administrator as agreed upon with the Insurance Company shall determine from time to time, in its sole discretion.

B. The Trustee shall hold such policy or policies of group insurance and safely keep same and shall execute such documents as may require its signature as owner of such policy or policies, for the purpose of obtaining and maintaining the policy or policies in force, or for any other purpose required of the owner of such group master policy or policies.

C. The Trustee shall act at the direction of Administrator in taking any and all actions regarding the termination, modification or replacement of any policy held hereunder and may delegate to Administrator the authority to act on its behalf in regard to any such determination, modification or replacement.

D. The Trustee shall have no duty to pay or collect any premiums or assessments on any group master policy or policies. Trustee shall not be required to institute any form of legal proceeding to collect any such premium or assessment. Likewise, the Trustee shall have no duty to determine whether the Administrator is properly performing its duties hereunder.

Appendix B

4. *Duties of Grantor.*

A. Grantor shall act as Administrator and perform all administrative duties in connection with the group master policy or policies of insurance issued to Trustee not performed by the issuing insurance company including, but not limited to, billing, collecting, and remitting premiums to the appropriate insurance company or companies, processing of applications for insurance coverage, issuance of certificates of insurance, and processing and payment of claims, together with making all decisions as to purchase, issuance, termination, modification or replacement of such group master policy or policies.

B. Administrator agrees to pay Trustee its regular and customary fee each year, or portion thereof, in advance, for its services hereunder, to be determined in accordance with Trustee's then current fee schedule. In addition, Administrator shall reimburse Trustee for any and all reasonable and necessary expenses which it may incur in the performance of its duties as Trustee including, but not limited to, attorney fees and costs.

5. *Resignation or Removal of Trustee.*

A. Trustee may resign at any time by giving to Administrator 30 days prior written notice of resignation. Trustee may resign immediately at any time that Administrator amends, or attempts to amend, this Trust Agreement without the written consent of Trustee.

B. Administrator may remove Trustee at any time by giving to Trustee 30 days prior written notice of removal.

6. *Appointment of Successor Trustee.* In the event of resignation or removal of any Trustee, Administrator shall have the

right to appoint a Successor Trustee. Such Successor Trustee may qualify by accepting this Trust in writing to Administrator.

7. *Amendment or Termination of Trust.*

A. This Trust may be terminated by Administrator at any time by giving to Trustee and all Participants 30 day prior written notice of termination.

B. This Trust shall terminate immediately in the event that any group master insurance policy or policies held hereunder terminate, lapse, expire without being renewed, or are cancelled for any reason unless the coverage or coverages provided in such policy or policies are replaced immediately without any gap(s) in coverage by like coverages provided by a substitute or successor insurance company approved by Trustee in writing in advance.

C. This Trust may only be amended by the Administrator, with the consent of Trustee. Both the Amendment and Trustee's consent thereto shall be in writing to be effective.

8. *Liability of Trustee and Hold Harmless.*

A. Trustee shall be protected in relying on any paper or document believed by it to be genuine and to have been made, executed or delivered by the party purporting to have made, executed or delivered the same, and shall be protected in relying and acting upon the opinion of counsel or upon the guidance and directions of Administrator in connection with any matter pertaining to execution of the Trust. The Trustee shall not be liable for any action taken or omitted by it in good faith nor for the act of any agent, employee, or attorney selected by Trustee with reasonable care. The Trustee may delegate any of its ministerial

powers or duties hereunder to its agents or employees.

B. Trustee shall be protected in acting upon direction of the Administrator, and Administrator shall hold Trustee harmless from any and all liability, loss, damage, cost or claim of any type whatsoever as a result of serving as Trustee hereunder except to the extent that such liability, loss, damage, cost or claim results from the negligence of Trustee in failing to safely hold the group master insurance policy or policies hereunder or in failing or refusing to perform any duty set out in Paragraph 3 hereof after written notice and request by Administrator.

9. *Dealing with Third Parties.*

A. No insurance company or other party shall be deemed a party to this Trust for any purpose or be deemed responsible for its validity or sufficiency. The obligations of any insurance company or other party contracting with the Trustee shall be measured and determined solely by the terms and conditions of the group master insurance policy or policies or other contracts which may be involved.

B. Any employer may become a Participating Employer in the insurance plan or plans provided by the group master insurance policy or policies held by Trustee by applying therefore and meeting all requirements imposed by Administrator and the insurance company underwriting such policy or policies including, but not limited to, underwriting and eligibility requirements. The terms and limitations of the insurance coverages provided to the Participants and their covered dependents the eligibility therefore, and the extension and termination of coverage thereunder shall be governed solely by the rules and regulations promulgated by Administrator and approved by the underwriting insurance

company or companies, and the applicable certificates and policies of insurance. Trustee shall have no direct or implied obligation to any Participating Employers.

10. *Spendthrift Clause. Limited Interest.*

A. No part of the Trust Estate, the group master insurance policy or policies held by Trustee hereunder nor the insurance proceeds or benefits payable under such group master insurance policy or policies, shall be subject to executing or other legal process for any obligation of any Participating Employer, or to the claims of creditors of any Participating Employer, in any manner, nor shall any such Participating Employer, have the power to sell, mortgage or encumber same, or any part thereof, nor anticipate the same, or any part thereof, by assignment or otherwise (except to the extent that policy benefits may be assignable to health care providers under the terms of any policy or policies hereunder.)

B. During the continuance of this Trust, no Participating Employer, nor any person claiming by, through, or under any one or more of them, shall have any right, title or interest in or to the Trust Estate, or any part thereof, except for such person's interest in any benefits provided under the terms of the group master insurance policy or policies hereunder.

11. *Severability.* In the event that any one or more provisions of this Trust Agreement shall be held or determined to be invalid or unenforceable by any court of competent jurisdiction or other appropriate authority, the remainder of this Trust Agreement shall continue and remain in full force and effect as if said invalid and/or unenforceable profision or porvisions had not been included herein.

Appendix B

12. *Governing Law.* This Trust is created and accepted in the State of Tennessee and all questions pertaining to the validity or construction of said Trust shall be determined in accordance with the laws of the State of Tennessee.

In witness whereof, and as evidence of acceptance of the Trust created hereby, the parties have executed this agreement of the 15 day of March, 1985.

Witnesses:
s/ Linda Carroll

Third National Bank in Nashville,
Trustee,
By: s/ Elizabeth C. Thompson
Vice President Title

Witnesses:
s/ Dianne B. Mous
s/ Patricia Benard

Group Programs, Inc.
Grantor/Administrator
By: s/ Patrick Huval

APPENDIX C — 1988 MASTER ADMINISTRATIVE AGREEMENT

MASTER ADMINISTRATIVE AGREEMENT

This master agreement, by and between Summit Insurance Plan Trust, hereinafter called the "Trust" and Group Programs, incorporated (hereinafter call the "Administrator")

is effective June 1, 1988

WITNESSETH THAT:

WHEREAS, the Company and the Administrator are desirous of entering into an Agreement reflecting certain rights and obligations of the parties with respect to the marketing and administration of group insurance plans, including those indicated in the attached Addenda and those which may hereafter be attached, all of said plans being thereinafter referred to as the "Plans":

NOW, THEREFORE, for and in consideration of these premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

General Conditions

In recognizing the Administrator as the Administrator with respect to the Plan(s), subject to all the terms and provisions of this Agreement,

1. The Company agrees:

Appendix C

a. Not to make available or to disclose, to individuals or firms, without prior written approval of the Administrator, any documents or supporting data prepared by the Administrator in connection with the Plan(s) other than to make available or disclose such information, documents or data to insured persons or beneficiaries, prospective insureds, attorneys, courts of law or regulatory bodies: the Trust shall have an unlimited right at any time to provide such information to its own attorneys and shall have the right to provide such information to such other parties as would be normal, reasonable and customary in the every day operation of its business.

b. To pay said Administrator:

1. Administrative allowances

All such allowances will be agreed to in writing in specific case addenda attached hereto and may be modified from time to time by mutual written agreement. All such allowances where permitted by state law will be payable to the Administrator.

c. Unless specified otherwise in the addenda attached, notification of any adjustments to the benefits of the schedule of premium rates will be in accordance with those requirements established in the master policy.

d. That it will indemnify the Administrator and hold it harmless from and against any and all liability the Administrator may incur solely as a result of an act or omission of the Trust, independently of all other causes. The Administrator will have no right to indemnification

unless: (i) the Trust is promptly notified of the claim against the Administrator for which indemnification is sought and is, at the time of such notice, expressly notified that indemnification will be sought: (ii) the Trust shall at all times while such claims is pending have the right (but not the duty, to defend said claim in its own name or in the name of the Administrator: (iii, the Trust shall at all times while such claim is pending have the right (but not the duty) to settle such claims: and (iv) the Administrator will at all times cooperate with the Trust in defense of the claim.

e. All records, ledgers, accounts, files and any other documents generated by the Administrator in connection with its duties as such are, and all shall remain, the property of the Administrator, but the Trust shall have access to all such records and documents as elsewhere provided in the Agreement.

2. The Administrator agrees:

a. To maintain throughout the term of this Agreement all licenses and certificates of registration which may be required under all applicable State, Federal and Local laws and regulations to enable the Administrator to act as such and to perform its duties and responsibilities hereunder.

b. To conform its method of conduction business to the reasonable rules of the Trust which are communicated to the Administrator, and to comply with all applicable Federal, State and Local laws and regulations.

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c. That premiums will be established by the Trust in accordance with the terms of the Group Policy(ies): and that all other charges and future modifications thereof made to Insureds by the Administrator will be subject to the prior written approval of the Trust.

d. That in connection with the administration of the Plans, it will not use policy forms, certificate forms or administrative forms except such forms as shall have been approved in writing by the Trust. The procedures for the use of such forms shall be set forth in writing by the Trust.

e. During the term of this Agreement all documents, books and records of the Administrator pertaining to Plan(s) specified in attached addenda will be open for inspection by the Trust at all reasonable times and that copies thereof shall be provided the Trust as required in the usual and regular conduct of its business and in the event of termination of Plan(s) covered by the attached addenda, until all matters related to the administration of such Plan(s) are resolved to the satisfaction of the Trust.

f. That it will indemnify the Trust and hold the Trust harmless from and against any and all claims, loss, damages and liability (including the Company's reasonable legal fees and expenses) caused or contributed to by any negligent, fraudulent or improper act or omission on the part of any partner, agent, employee or other person acting on behalf of the Administrator and by any failure to perform its obligations under the terms of this Agreement (unless such act, omission, or failure was at the written direction of the Trust).

Appendix C

g. The Administrator has no authority to do, warrants that he has not done and agrees not to do the following: (1) to make, alter or discharge any contract, policy or receipt, nor to waive any forfeiture, provision or condition thereof: (2) to receive any monies on behalf of the Trust except upon strict compliance with the terms and conditions of the receipts, policies or contracts issued by the Trust and with the rules of the Trust: (3) to rebate or offer to rebate any party of a premium: (4) to issue or circulate any advertising material, circular, pamphlet or any other release relating to the Trust unless the same shall have been authorized and approved in writing by the Trust: (5) to make any misrepresentation or incomplete comparison for the purpose of inducing a policyholder, group account or insured person in this or any other company to convert, lapse, forfeit or surrender his insurance therein, or for any other purpose: (6) to bind or obligate the Trust or subject the Trust to any liability unless specifically authorized in writing by the Trust.

h. That where a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendment thereto shall be furnished to the Trust by the Administrator and shall be retained as part of the official records of both the Trust and the Administrator for the duration of the policy and live years thereafter.

ARTICLE II

Marketing

1. All printed materials used in connection with administering the Plans, soliciting insureds thereunder

and communicating with Insureds in any way will be prepared by the Administrator. No such materials shall be used without the prior written consent of the Trust. Printing expenses will be paid either by the Administrator or by the Trust as shown in the attached addenda for each specific policy: in the event such expenses are to be paid by the Trust for a specific policy, as shown in the addenda, such expenses will be paid only to the extent those expenses are specifically authorized and accepted in advance in writing by the Trust. All costs of distributing such materials shall be borne by the Administrator.

2. The form and content of all advertising with respect to the Plans must be approved in advance in writing by the Trust. With respect to all advertising materials which have been approved (and not thereafter disapproved) by the Trust, the time and place of use shall be in the discretion of the Administrator: provided, however, that no advertising material shall be used or distributed for use (i) in jurisdictions and locations where the Trust has stated in writing to the Administrator that such material may not be used or (ii) in such a manner as to violate any State, Federal or Local law, rule or regulation.

ARTICLE III

Administration

1. The Administrator is to issue certificates or bill and collect premiums with respect to any Plan(s). The Administrator agrees:

   a. To issue certificates for policies where required by state law to insureds who apply and who meet the

Trust's underwriting standards. When any specific Plan requires a prospective Insured to complete an application or enrollment form including questions as to the health of any person to be insured, the acceptance or declination of such person(s) shall be made by the Administrator. The Trust agrees to permit the Administrator to accept or decline applications subject to underwriting guidelines attached to and made a part of this agreement.

b. To transmit premium notices, lapse notices and, where applicable, reinstatement application forms to Insureds as directed by the Trust; to prepare and mail premium notices to Insureds reasonably in advance of the premium due date but in no event later that the date such notices are required to be mailed by any applicable State, Local or Federal law or regulation: and to receive and record paid premiums in the manner and fashion as required by the Trust.

2. Administrator agrees to perform the following services in administration of claims.

a. Provide insured persons with claim forms and receive from insured persons claim material supporting each claim, using claim forms agreed to by the Trust.

b. Administrator will promptly consider and, in accordance with the terms of the applicable policy, and rules and procedures for paying claims, pay all such claims due, or decline such claims, including a clear statement summarizing for the insured for the

insured person the benefits to which entitled or the reason for declination.

3. To maintain accurate and comprehensive accounting and statistical records including premium and coverage records. All records, documents, data and solicitational, promotional and administrative materials prepared, accumulated, distributed or used by the Administrator in connection with the Plans shall be maintained in their original form by the Administrator during the terms of this Agreement and thereafter until the latest of the following dates:

   (i) the date on which all known claims under the Plans have been paid or otherwise finally resolved;

   (ii) the date five years after termination of this Agreement;

   (iii) the date as of which neither the Trust nor the Administrator is no longer required to maintain such records, documents, data and materials by any applicable State, Federal or Local law or regulation.

4. To perform all clerical and administrative functions necessary for prompt, proper and efficient service to insureds, the Trustee and the Settlor of the Plan(s) referred to in specific case addenda.

Appendix C

ARTICLE IV

Other Conditions

1. Either party may terminate the Agreement at any time by giving sixty (60) days prior written notice.

2. In the event of termination of the Plan(s) specified in the addenda, the Administrator agrees to refund all commissions, administrative and production allowances on unearned premium for such Plan(s).

3. Should either party fail to perform in accordance with this Agreement and such failure should continue without being remedied for a period of sixty (60) calendar days after receipt of written notice thereof given to the defaulting party by the other party, the party giving notice may after said sixty (60) days at its sole election terminate this Agreement without loss of its rights or remedies either in law or in equity.

4. No assignment, transfer or disposal of any commissions, service, administration or other fees by the Administrator may have on account of this agreement may be made at any time without written approval of the Trust, except at time of execution of this agreement Administrator may assign payment of commissions due to a business entity, engaged in the sales and service of insurance, in which he is proprietor, a partner or employee; such assignment to be indicated below. The duties of the Administrator hereunder may not be delegated, directly, or indirectly to any other person, firm or corporation without the prior written consent of the Trust. The Administrator will

promptly notify the Trust in the event of any change in its ownership or its management personnel.

5. The Administrator will promptly notify the Trust of all pending litigation affecting or which may affect the Trust or arising under policies or certificates of insurance issued by or on behalf of the Trust by the Administrator.

This is a contract for services performed and nothing herein should be construed to establish or constitute an employee relationship between Administrator and Trust.

SUMMIT INSURANCE PLAN TRUST

Dated May 11, 1988 By s/ Marjorie Kirkpatrick

ADMINISTRATOR

GROUP PROGRAMS, INC.

Dated May 17, 1988 By s/ Patrick Huval

ADDENDUM TO MASTER ADMINISTRATIVE AGREEMENT

By and between *Group Programs, Incorporated* (Administrator) and Summit Insurance Plan Trust (the Trust). This addendum sets forth allowances to be paid Administrator for one or more group policies specified, shows whether the Trust or the Administrator bills and collects premiums; show whether the Trust or Administrator pay claims; and sets forth whether or not the Trust is responsible for payment of printing expenses for solicitation of eligible applicants. This addendum is subject to all the terms and conditions of the Master Administrative Agreement. Unless otherwise specified first year commissions are payable with respect to premiums paid for the first year of insurance under the group policy for each insured person, and renewal commissions are payable with respect to all other premiums for that insured person.

Pol #	Name Group Programs, Inc.	First Year Comm	Renew Comm	Adm Fee	Who Bills and Collects Premiums	WhoPays Claims*	Who Pays Printing Expenses
	Summit Insurance Plan Trust	VS	VS	13%	Administrator	Administrator	Administrator

*Medical/Dental claims only

Agent-Administrator issues certificates under account shown above.

This addendum is effective *June 1, 1988.*
If an addendum was previously in effect for a policy or policies listed above, the provisions of this addendum do not affect the prior agreement with respect to such policy or policies.

AGENT-Administrator

By s/ Patrick Huval

Dated May 17th, 1988

Summit Insurance Trust Plan

By s/ Marjorie Kirkpatrick

Date May 11th, 1988

APPENDIX D — CERTIFICATE OF INSURANCE

CERTIFICATE OF INSURANCE

Summit Insurance Plan

(Herein called "Plan", "We", "Us", "Our" or "Ours")

CERTIFIES that, subject to the terms of the group policy numbered below (herein called the Policy), the person named on the coverage card is insured on the effective date shown. The Effective Date shown is the effective date of the most recent change in benefits for which the person named is insured.

POLICY NUMBER:	3174
GROUP POLICYHOLDER: (Herein called the "Holder")	TRUSTEES OF THE SUMMIT INSURANCE PLAN TRUST
PREMIUM DUE DATE:	First day of the calendar month
POLICY MONTH:	The first day of a period which begins with the premium due date and ends on the day preceding the next following premium due date.

In consideration of the application for this policy, a copy of which is attached and made a part hereof, and in consideration of the payment by the Policyholder during the continuance of this policy of all premiums when they fall due as provided herein, the Plan agrees to pay the amounts of insurance set forth herein, with respect to the several persons insured hereunder, in accordance with and subject to the provisions of this policy.

"Plan Description" as used herein means the cover card affixed to this plan certificate or the latest of such cards issued.

Appendix D

Portions of the Policy are described on this and the attached pages. All benefits described are subject to the Policy, which alone makes up the agreement under which payments are made.

This certificate replaces any and all certificates and riders that may have been issued to the covered person under any group policies issued to the Holder by us.

Jurisdiction: This policy is delivered in and is governed by the laws of Louisiana.

ALL EXPLANATIONS OF BENEFITS CONTAINED IN THIS CERTIFICATE ARE SUBJECT TO THE TERMS, CONDITIONS, DEFINITIONS, LIMITATIONS, AND EXCLUSIONS CONTAINED IN THE GROUP MASTER POLICY. IN THE EVENT OF A CONFLICT BETWEEN THE LANGUAGE OF THIS CERTIFICATE AND THAT OF THE GROUP MASTER POLICY, THE LANGUAGE OF THE GROUP MASTER POLICY SHALL GOVERN.

THE ADMINISTRATOR OF YOUR PLAN IS:

Group Programs, Inc.
P.O. Box 1210
Breaux Bridge, LA 70517

APPENDIX E — AMENDMENT TO GROUP POLICY

AMENDMENT TO GROUP INSURANCE
POLICY NUMBER: 3174

ISSUED TO: THIRD NATIONAL BANK,
NASHVILLE, TENNESSEE
TRUSTEE OF THE
SUMMIT INSURANCE PLAN TRUST

EFFECTIVE: APRIL 1, 1989

It is hereby agreed between the Policyholder and the Summit Insurance Plan Trust that:

That the following provisions are added to the group policy:

PRE-CERTIFICATION REVIEW SERVICE PROGRAM
SPECIAL PROVISIONS

Pre-Treatment Review Plan

This plan may include the Pre-Certification Review Service (Pre Cert) program. This means that subject to all other provisions of the plan, Pre-Cert will review each proposed hospital admission, and each proposed surgical procedure which is to be performed outside the doctor's office (excluding minor first aid) and will determine and authorize

- the medical necessity of such treatment;
- the appropriate location for such treatment to be provided, and
- in the case of a hospital admission, the length of stay for each in-patient hospital confinement.

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Pre-Cert must be contacted:

- in advance of treatment being rendered; or
- in the case of an emergency, within 48 hours of the date emergency treatment begins.

The term "emergency" means:

(a) an accident which requires immediate treatment; or

(b) a "life threatening" illness which requires immediate treatment at a hospital. The doctor who attends the covered person must certify that the illness was "life threatening".

If Pre-Cert is not contacted as described above, then expenses related to a hospital admission or out-patient surgery will be reduced by 20%

Such 20% is not considered a Covered Charge for any purpose under the policy, including but not limited to:

(1) Benefits payable;
(2) Deductible;
(3) Coinsurance Rate;
(4) Individual/Family Out-Of-Pocket limit.

No Benefits are payable for any Treatment, Service or Hospital Confinement which is not Medically Necessary.

Covered Charges are subject to any Deductible or Coinsurance Rate requirements.

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Second Opinions:

Pre-Cert may require a second opinion before granting preauthorization for expenses incurred for certain medical or surgical treatment. In this case, these expenses:

- will not be subject to the plan deductible; and
- will be payable at 100%

Alternate Care and Treatment:

Alternate forms of care and treatment may be recommended by Pre-Cert. Pre-Cert may from time to time suggest the use of alternate treatment plans or alternate treatment facilities such as Home Health Care or Hospice Care which may not be included in the plan, or are included under the plan but on a basis that differs from the care and treatment now recommended by Pre-Cert. When this happens, subject to approval of the covered person and the covered person's:

- family; and
- attending doctor;

These expenses will be payable under the plan on the same basis as the care and treatment for which they are substituted.

HOME HEALTH CARE

The plan will pay the reasonable and customary charges made by a Home Health Care Agency for:

(1) visits to your home by any of the following:
  (a) a registered nurse or licensed practical nurse,

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(b) a physical, occupational, respiratory or speech therapist,
(c) a home health care aide,
(d) a licensed midwife or licensed nurse midwife

Summit Insurance Plan will pay for only one visit per day and up to 40 visits in each calendar year. Four hours of service provided by a Home Health Care Agency is considered to be one home health care visit.

(2) The following services or supplies when provided at home:
(a) medical supplies
(b) drugs and medicines
(c) laboratory services

Payment for these services and supplies is limited to the amount that the Summit Insurance Plan would have paid if the covered person had been confined in a hospital as a registered bed-patient.

No amount will be paid for Home Health Care covered expenses unless these conditions are met:

(1) Continued confinement in a hospital or Extended Care Facility would be required if home health care had not been available.
(2) The confinement at home is medically necessary and is not for custodial care.
(3) The treatment at home starts:
(a) after a period of confinement in a hospital or Extended Care Facility that lasted for at least 3 days; and
(b) not more than 7 days after such confinement ended.

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(4) The treatment at home is for the same illness (or related condition) which made the confinement in the hospital or Extended Care Facility necessary.
(5) A physician must have a written order for home health care services.
This order must be renewed every 30 days.
(6) The Home Care Agency must be certified.

HOSPICE CARE

The plan will pay for the care of a terminally ill employee or dependent. Terminally ill means that the patient has a life expectancy of 6 months or less as certified by the attending physician. Covered Expenses include:

(1) "Hospice Care In-Patient Covered Expenses" up to 60 days. This means such charges by a hospice for confinement as an in-patient:

(a) for room and board during such confinement; and
(b) for Hospice Services furnished under a Hospice Care Program

(2) "Hospice Care Out-Patient Covered Expenses" up to the reasonable and customary charges, with a maximum of $3,000, during any one benefit period. A benefit period begins when the attending physician certifies the employee or dependent is terminally ill and ends six months later or when the person dies if earlier. These expenses are incurred for Hospice Services rendered on an out-patient basis.

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"Hospice Services" means all services and supplies other than room and board furnished to the terminally ill person or to this family through a Hospice Care Program.

"Hospice Care Program means a formal program directed by a Doctor for a terminally ill person. This program is through

A. a centrally-administered and nurse-coordinated program which.

(a) provides a coherent system primarily of home care;
(b) uses a Hospice Team;
(c) is available 24 hours a day, seven days a week, or

B. confinement in a Hospice.

The Hospice Care program:

a. must meet the standards set by the National Hospice Organization. If such Program is required by a state to be licensed, certified or registered, it must also meet that requirement to be considered a Hospice Care Program.
"Hospice Team" means a team of professional and volunteer workers who provide care to:

A. reduce or abate pain or other symptoms or mental or physical distress;

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B. meet the special needs arising out of the stresses of terminal illness, dying and bereavement.

A Hospice Team must include:

(a) a Doctor; and
(b) a registered graduate nurse.

It may also include any of the following:

(a) a social worker
(b) a clinical psychologist;
(c) a physical therapist; or
(d) an occupational therapist

"Hospice" means a facility which provides short periods of in-patient confinement for a terminally ill person in a home-like setting for either direct care or respite. This facility:

A. may be either free-standing or alliliated with a Hospital;
B. must operate as an integral part of the Hospice Care Program; and
C. must provide care for at least 2 but no more than 8 persons who are:

(a) not related;
(b) terminally ill; and
(c) confined as in-patients.

The following provisions are deleted, amended and/or changed as follows:

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PAGE 9 —SCHEDULE OF BENEFITS

The lifetime benefit maximum for all charges in connection with bone marrow and/or organ transplant is hereby changed from $50,000 to $250,000.

The lifetime benefit maximum for all charges for care or treatment related to Acquired Immunity Deficiency Syndrome (AIDS) is hereby deleted. This benefit is now covered as any other illness.

PAGE 10 — SCHEDULE OF BENEFITS

Room and Board, not to exceed the hospital's average semi-private room rate 80%
is hereby changed to:
Room and Board (including post intensive care room), not to exceed the hospital's average semi-private room rate 80%

PAGE 10 — SCHEDULE OF BENEFITS

Intensive Care Units, not to exceed twice the hospital's average semi-private room rate 80%
is hereby changed to:
Intensive Care Units, not to exceed three times the hospital's average semi-private room rate 80%

PAGE 15 — MEDICAL BENEFITS

The lifetime maximum for transplantation of an organ is hereby changed from $50,000 to $250,000.

25. The Program will cover eligible expenses related to the transplantation of an organ; including expenses for patient

screening, organ procurement, transportation of the organ, transportation of the patient and/or donor, surgery for the patient and donor and immunosuppressant drugs, subject to policy limitation of $250,000 per covered person per lifetime. The following conditions must be met in order for this coverage to apply:

PAGE 23 — DENTAL PLAN EXCLUSIONS AND LIMITATIONS

The following is added as an exclusion and limitation:
16. Orthodontic benefits to any person age 19 or older.

PAGE 34— EXCLUSIONS AND LIMITATIONS FOR ALL MEDICAL BENEFITS:

Exclusion R is hereby deleted in its entirity and the following is added as exclusion R:

R. Any expense for male or female sterilization, reversal, sex change or implementation within any sex organ such as but not limited to penal prosthesis or any expense for correction or to assist in correcting or testing of impotency, fertility, or infertility whether voluntary or otherwise, any artificial organ implants, transplantation of other than human organs, in vitro fertilization and artificial insemination;

Exclusion S is hereby deleted in its entirity and the following is added as exclusion S:

S. Charges made, or services provided, by any closely related person. "Closely related person" means you, your spouse, or child, and you or your spouse's grandchild, brother, sister or parent. For the purposes of this insurance, "closely related person" includes your employer and any employee of your employer;

Appendix E

PAGE 35 — EXCLUSIONS AND LIMITATIONS FOR ALL MEDICAL BENEFITS:

Exclusion V is hereby deleted and the following is added as exclusion V:

V. Marriage counseling, family relations counseling and/or co-dependency treatment;

Exclusion W is hereby deleted and the following is hereby added as exclusion W;

W. Birth control medication or devices whether medically necessary or not, appetite suppressant drugs, dietary supplements, vitamins;

Exclusion Y is hereby deleted and the following is hereby added as exclusion Y:

Y. Radical heratotomy, exotropia, esotropia, myopia, (near sightedness) hyperopic, (far sightedness), presbyopia, astigmatism, strabismus and/or any similar condition or procedure for the correction of refractive errors.

Exclusion Z is hereby deleted and the following is hereby added as exclusion Z:

Z. Speech and/or occupational therapy (except for home health care) and except when ordered by a physician for the purpose of restoring partial or complete loss of speech resulting from stroke, surgery, cancer, radiation laryngitis, cerebral palsy, accidental injuries or other similar structural or neurologic disease.

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Exclusion AA is hereby deleted and the following is hereby added as exclusion AA:

AA. Services, supplies, food or treatment in connection with or related to obesity and/or any weight control program whether medically necessary or not, for any exercise program, for removal of weight or fat, whether for obesity or for any other diagnosis and whether by diet, injection of any fluid or use of any medications or surgery of any kind and/or resuction of excess skin or fat following weight loss or pregnancy.

Exclusion FF is hereby deleted and the following is hereby added as exclusion FF:

FF. Any care or treatment for realignment of jaws, including, but not limited to atrophy of the lower jaw, occlusion, maxillofacial surgery tempermandibular joint dysfunction and retrognathia.

PAGE 36 — PRE-EXISTING CONDITIONS

A. Medical expenses incurred during the first 12 months that coverage for the Employee and/or Dependent is in force under this contract will not be considered as covered medical expenses if they are in connection with a disease, illness, accident or injury for which the Covered Person received treatment or services, or was prescribed drugs, or for which any prudent person should have sought medical attention during the 12 month period immediately prior to the effective date of such coverage.

Appendix E

ACCEPTED: Third National Bank,
Nashville, Tennessee,
Trustee of the
Summitt Insurance Plan Trust

Date: March 30, 1989

by: s/ Maggie Kirkpatrick
Maggie Kirkpatrick
Trust Officer